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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

Arizona Corporation Commission

DOCKETED

MAR 16 2015

DOCKETED BY

IN THE MATTER OF THE APPLICATION  
OF FIRST CHOICE TECHNOLOGY, INC. }  
AND IBFA ACQUISITION COMPANY FOR }  
APPROVAL OF A PURCHASE }  
AGREEMENT. }

DOCKET NOS. T-20400A-14-0296

T-04314A-14-0296

DECISION NO. 74986

ORDER

Open Meeting  
March 2 and 3, 2015  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On August 4, 2014, counsel for First Choice Technology, Inc. ("First Choice") and the duly appointed Receiver for IBFA Acquisition Company, LLC ("IBFA") (together, "Applicants"), filed an application notifying the Arizona Corporation Commission ("Commission") of a Purchase Agreement whereby First Choice will acquire substantially all of the long distance customer assets of IBFA (the "Acquisition"). This includes, but is not limited to, IBFA's customer accounts in the State of Arizona.

2. In support of this filing, Applicants provide the following information.

Introduction

3. On January 23, 2014, Thermo Credit, LLC ("Thermo"), the secured creditor of IBFA, filed a Petition to Register Foreign Judgment Filed ("Petition") with the Circuit Court of Cook

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1 County, Illinois ("Court"). This Petition initiated a Uniform Commercial Code-1 ("UCC-1")  
2 foreclosure of IBFA's assets by Thermo and was subsequently approved by the Court.<sup>1</sup>

3 4. Pursuant to a July 23, 2014, Court Order and Secured Creditor's Bill of Sale, First  
4 Choice was awarded the assets of IBFA as the result of an auction (also known as a UCC-1 sale) held  
5 by Thermo. First Choice, as the highest bidder, acquired ownership, right, title and interest in and to  
6 all of IBFA's long distance assets, including its customer accounts, and Thermo received the purchase  
7 price pursuant to the provisions of the Bill of Sale.

8 **Description of the Applicants**

9 A. First Choice Technology, Inc.

10 5. First Choice holds a Certificate of Convenience and Necessity ("CC&N") to provide  
11 competitive resold long distance telecommunications services in Arizona pursuant to Decision No.  
12 70345.

13 B. Receiver for IBFA Acquisition Company, LLC.

14 6. Pursuant to a May 23, 2014 Court Order, Mr. Scott Howsare was appointed the  
15 Receiver of IBFA. Mr. Howsare also serves as President of First Choice. However, in his role as  
16 Receiver, Mr. Howsare acted on behalf of Thermo Credit and not on behalf of First Choice. Mr.  
17 Howsare was selected by Thermo Credit to act as a Receiver due to his prior experience in matters of  
18 this type and his prior professional relationship with Thermo Credit.

19 **Description of the Transaction**

20 7. The Applicants state the Acquisition proposes to consolidate the long distance  
21 business and customer accounts of IBFA with those of First Choice in order to create a single, larger  
22 provider of telecommunications services, facilitating efficiencies to benefit all of the Applicants  
23 customers. IBFA's (4) four long distance customers affected by this Acquisition will be given the  
24 opportunity to switch their service to an alternate carrier; those who choose not to switch their service  
25 will continue to receive uninterrupted service from First Choice. First Choice anticipates that none of  
26 the customers will experience any change in rates or services and, to the extent any of IBFA's rates are

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28 <sup>1</sup> A UCC-1 Financing Statement filing is a state approved filing for a lender to file against a debtor in order to place  
the lender in position to collect debt owed to the lender by the debtor in the event the debtor becomes insolvent. For  
example, a bank will place a UCC-1 against a company they loan money to until the loan is paid.

1 not presently included in First Choice's tariffs, First Choice will amend its tariffs accordingly to  
2 include such rates.

3 **Request for Waiver of Slamming Rules**

4 8. The Applicants seek a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1901  
5 to -1913, the Slamming Rules.<sup>2</sup> The Applicants indicate that a customer notice of the pending transfer  
6 of customers from IBFA to First Choice was delivered on or about September 1, 2014. The notice  
7 informed the IBFA customers of the transfer pursuant to Section 47 C.F.R. § 64.1120(e)(3) of the  
8 Federal Communications Commission's ("FCC's") rules.

9 9. Staff has reviewed the notice that was sent to those affected customers. Because the  
10 notice informs customers that the rates, terms and conditions of service will not change as a result of  
11 the proposed transactions and informs customers that they may subscribe to the telecommunications  
12 service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in  
13 this matter.

14 **Request for Waivers of A.A.C. R14-2-1107 (A)(2) and (B)**

15 10. The Applicants also seek a waiver of the customer notice section of A.A.C. R14-2-  
16 1107 (A)(2) and the publication requirement specified in A.A.C. R14-2-1107 (B).<sup>3</sup> As mentioned,  
17 customers have received notice as required by the FCC. Staff believes that a waiver of A.A.C. R14-2-  
18 1107 (A)(2) and (B) is appropriate in this circumstance as service to the affected customers will not be  
19 abandoned or discontinued and IBFA's customers will continue to receive service under the same  
20 rates, terms and conditions.

21 **Complaints and Compliance**

22 11. The Consumer Services Section of the Utilities Division reports that there have been no  
23 complaints, inquiries, or opinions about First Choice or IBFA from January 1, 2011, to the present.  
24 According to the Corporations Division, both First Choice and IBFA are in good standing. First  
25 Choice is current with its Utilities Annual Report filings; however, IBFA did not file its 2013 Utilities  
26 Annual Report. A check of the Compliance Database by the Compliance Section of the Utilities  
27

28 <sup>2</sup> See Response to Staff Data Request STF 1.14 filed on October 1, 2014.

<sup>3</sup> See Response to Staff Data Request STF 1.13 filed on October 1, 2014.

1 Annual Report. A check of the Compliance Database by the Compliance Section of the Utilities  
2 Division indicates there are currently no delinquencies for First Choice and IBFA. .

3 **Staff Recommendations**

4 12. Staff recommends approval of the Application of First Choice and the Receiver for  
5 IBFA for First Choice to acquire the Arizona customers of IBFA. Staff further recommends that  
6 approval be conditioned on the following:

- 7 A. That First Choice provide notice to Docket Control within thirty (30) days following  
8 completion of the proposed transaction in this Application;
- 9 B. an affidavit, verifying the customer notice described previously has been delivered to  
10 the affected customers, should be filed by First Choice with Docket Control within  
11 thirty (30) days of the effective date of a Decision in this matter; and
- 12 C. that First Choice file an updated tariff, within thirty (30) days of the effective date of a  
13 Decision in this matter, to incorporate the rates, terms and conditions of service that  
14 were included in the IBFA tariff.

15 13. Staff believes the Commission's Slamming and Discontinuance Rules all apply to this  
16 transaction. However, based on the above, Staff recommends the following:

- 17 A. A waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming  
18 regulations that may be inconsistent with the FCC's rules regarding the transfer of  
19 customer bases because the notice informs customers that the rates, terms and  
20 conditions of service will not change as a result of this proposed transfer and informs  
21 customers that they may subscribe to the telecommunications service provider of their  
22 choice;
- 23 B. a waiver of A.A.C. R14-2-1107(A)(2), which governs a telecommunications company's  
24 verification that all affected customers have been notified of the proposed  
25 discontinuance of service and that all affected customers will have access to an  
26 alternative interexchange service provider; and
- 27 C. a waiver of A.A.C. R14-2-1107(B), which requires that the Applicant publish legal  
28 notice of the application in all counties affected by the application, describing with  
particularity the substance of the application.

14. IBFA holds a CC&N to provide competitive resold interexchange telecommunications  
services (except local exchange services) in Arizona pursuant to Decision No. 69649. IBFA was a  
Michigan limited liability company with headquarters located at 353 Sacramento Street, Suite 1500,  
San Francisco, CA 94111.

15. Following completion of the customer transfer transaction, IBFA will be an entity with no Arizona customers and no longer providing service in Arizona. As mentioned, IBFA is delinquent in filing their 2013 Utilities Annual Report. Additionally, Staff attempts to contact the last known point of contact for IBFA via e-mail, telephone and certified letter generated no response. While neither First Choice nor IBFA have requested cancellation of IBFA's CC&N, given the preceding, Staff recommends the CC&N of IBFA be cancelled subject to the following:

- A. A copy of the Memo and proposed Order for this case will be delivered to IBFA at IBFA's last known address and placed in its CC&N Docket No. T-04314A-05-0338;
- B. IBFA will be given sixty (60) days from the date of the Order in this Docket to object to cancellation of its CC&N and request a Hearing if it so desires;
- C. a separate notice will be sent to IBFA, with a copy of the Order attached, stating that the company has sixty (60) days from the date of the Order to object to cancellation of its CC&N and request a Hearing or cancellation of its CC&N will occur; and
- D. if, after sixty (60) days have expired with no response from IBFA, Staff should docket a Report and Order recommending cancellation of IBFA's CC&N.

## CONCLUSIONS OF LAW

1. First Choice Technology, Inc. and IBFA Acquisition Company, LLC are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over First Choice Technology, Inc. and IBFA Acquisition Company, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 12, 2015, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of First Choice Technology, Inc. and IBFA Acquisition Company, LLC to acquire the customer assets of First Choice Technology, Inc. be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases be and hereby is approved.

1 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1107 (A)(2),  
2 governing a telecommunications company's verification that all affected customers have been notified  
3 of the proposed transfer and A.A.C. R14-2-1107 (B), which requires that the Applicant publish legal  
4 notice of the application in all counties affected by the application, be and hereby is approved.

5 IT IS FURTHER ORDERED that, within thirty (30) days following the closing of the  
6 proposed transaction, First Choice Technology, Inc. and IBFA Acquisition Company, LLC inform the  
7 Commission by filing an affidavit with Docket Control that transaction-related activities are  
8 completed.

9 IT IS FURTHER ORDERED that, within thirty (30) days following the closing of the  
10 proposed transaction, First Choice Technology, Inc. and IBFA Acquisition Company, LLC inform the  
11 Commission by filing an affidavit with Docket Control that verifies the customer notice has been  
12 delivered to all affected customers.

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IT IS FURTHER ORDERED that First Choice Technology, Inc. file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the IBFA Acquisition Company, LLC tariff.

IT IS FURTHER ORDERED that a process shall commence to cancel IBFA Acquisition Company, LLC's CC&N consistent with Finding of Fact 15.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 16<sup>th</sup> day of March, 2015.

  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:MAC:sms\MAS

1 SERVICE LIST FOR: FIRST CHOICE TECHNOLOGY, INC. AND IBFA ACQUISITION  
2 COMPANY, LLC

3 DOCKET NOS.: T-20400A-14-0296 AND T-04314A-14-0296

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